



UNITED STATES SENATE  
**REPUBLICAN  
POLICY COMMITTEE**

Larry E. Craig, Chairman  
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**“The Judicial Emergency Responsibility Act”**

**Senator Leahy’s Remedy to the  
Crisis in the Judiciary**

*Must we wait for the administration of justice to disintegrate further before the Senate will take this crisis seriously and act on the nominees pending before it?*

*—Senator Patrick Leahy, Congressional Record, April 2, 1998*

On April 2, 1998, Senator Leahy introduced S. 1906, the Judicial Emergency Responsibility Act. That bill was designed to require Senate action, prior to an extended recess, on Circuit Court nominations that had been pending for two months and were considered judicial emergencies. Specifically, the bill would have amended section 46 of title 28, United States Code, by adding to the end the following:

*“(e) Action by Senate Required. – The Senate shall not recess during a session for more than 9 days without first voting on a judicial nomination in any case in which – (1) the nomination to fill the judiciary vacancy in the affected circuit court has been pending before the Senate for a period of 60 days or longer; and (2) a judicial emergency is declared pursuant to subsection (b) due to vacancies on the affected circuit court.”*

Senator Leahy’s remarks below regarding his legislation reveal that he considered it vitally important for the Senate to act quickly on pending judicial nominations, particularly those for the circuit courts.

*“The purpose of this bill is . . . to require the Senate to do its duty and to act on judicial nominations before it recesses for significant stretches of time when a Circuit Court is suffering from a vacancy emergency.”*

*[Congressional Record, S3123, April 2, 1998]*

*“Unfortunately Republican Senate leadership has not taken the judicial vacancies crisis seriously and has failed to take the concerted action needed to end it. They continue to perpetuate vacancies in almost one in 10 federal judgeships. With 11 nominees on the Senate calendar and 32 pending in Committee, we could be making a difference if we would take our responsibilities to the federal courts seriously and devote the time*

necessary to consider these nominations and confirm them.”

[*Congressional Record*, S5426, May 22, 1998]

## What If Leahy’s Bill Were Law?

Had Senator Leahy’s bill become law, Senators would be spending this week prior to their month-long recess addressing the crisis in the federal judiciary. Today 53 judicial nominations are pending – 11 on the Executive Calendar and 42 in the Judiciary Committee. Of these, 11 Circuit Court nominations fit the criteria of Senator Leahy’s “Judicial Emergency Responsibility Act.”

Were Senator Leahy to follow through on his stated convictions to vote on all nominations to the Courts of Appeals considered “judicial emergencies” and pending for least two months, the following nominees would be serving the nation in the third, coequal branch of the Federal Government.

| <b><u>Nominee</u></b>  | <b><u>Judgeship</u></b> | <b><u>Date Received</u></b> | <b><u>Days in Congress</u></b> |
|------------------------|-------------------------|-----------------------------|--------------------------------|
| Jeffrey S. Sutton      | Sixth Circuit           | May 9, 2001                 | 447                            |
| Priscilla Richman Owen | Fifth Circuit           | May 9, 2001                 | 447                            |
| Dennis W. Shedd        | Fourth Circuit          | May 9, 2001                 | 447                            |
| Terrence W. Boyle      | Fourth Circuit          | May 9, 2001                 | 447                            |
| Charles W. Pickering   | Fifth Circuit           | May 25, 2001                | 432                            |
| Carolyn B. Kuhl        | Ninth Circuit           | June 22, 2001               | 402                            |
| D. Brooks Smith        | Third Circuit           | September 10, 2001          | 319                            |
| William H. Steele      | Eleventh Circuit        | October 9, 2001             | 292                            |
| Susan Bieke Neilson    | Sixth Circuit           | November 8, 2001            | 261                            |
| Henry W. Saad          | Sixth Circuit           | November 8, 2001            | 261                            |
| Jay S. Bybee           | Ninth Circuit           | May 22, 2002                | 67                             |

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